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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID ARNOLD RODRIGUEZ, JR.,

Defendant and Appellant.

F061269

(Super. Ct. No. 1226072)

OPINION

APPEAL from a judgment of the Superior Court of Stanislaus County. John D. Freeland, Judge.

John F. Schuck, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Kathleen A. McKenna and Amanda D. Cary, Deputy Attorneys General, for Plaintiff and Respondent.

-ooOoo-

David Arnold Rodriguez, Jr., was convicted of two counts of attempted murder, infliction of corporal injury on his spouse, and false imprisonment.¹ The jury also found true various enhancements as well as the allegation that the attempted murders were willful, deliberate, and premeditated. Rodriguez admitted he suffered two prior convictions that constituted strikes. He was sentenced to a determinate term of 29 years and an indeterminate term of 75 years to life.

Rodriguez argues that one of the attempted murder convictions, along with the special allegation associated with that conviction, was not supported by substantial evidence. He argues the trial court erred in excluding some evidence and admitting other evidence. Finally, he asserts the sentence for false imprisonment must be stayed pursuant to Penal Code section 654.² We find no merit to any of these arguments and affirm the judgment.

FACTUAL AND PROCEDURAL SUMMARY

The second amended information charged Rodriguez with the attempted murder of C.³ in violation of sections 187, subdivision (a), 189, and 664 (count 1), the attempted murder of Cody Jedediah Toale in violation of the same statutes (count 2), infliction of corporal injury on a spouse, C., in violation of section 273.5, subdivision (a) (count 3), and false imprisonment of C. in violation of section 236 (count 4). The information alleged as a special enhancement that Rodriguez acted willfully, deliberately, and with premeditation in attempting to murder both C. and Toale. (§ 664, subdivision (a).) The information also alleged as enhancements that Rodriguez personally used a deadly and dangerous weapon in violation of section 12022, subdivision (b)(1) (counts 1, 2, and 3),

¹Rodriguez successfully moved to represent himself at trial pursuant to *Faretta v. California* (1975) 422 U.S. 806.

²All statutory references are to the Penal Code unless otherwise stated.

³Because other members of the Rodriguez family besides defendant are discussed, we will refer to them by their first names to avoid confusion. No disrespect is intended.

personally inflicted great bodily injury on C. within the meaning of section 12022.7, subdivision (e) (counts 1 and 3), and personally inflicted great bodily injury on Toale within the meaning of section 12022.7, subdivision (a) (count 2). Finally, the information alleged Rodriguez had suffered two prior convictions within the meaning of section 667, subdivision (a) (counts 1, 2, and 3) and had suffered two prior convictions that qualified as strikes within the meaning of section 667, subdivision (d) (all counts).
C.

C. was married to Rodriguez on the date of the events. When she arrived home on the evening in question, Rodriguez and their son, David, were present. Rodriguez began arguing with her when she walked in the door. C. did not want to get into an argument, so she considered leaving the house. She found her keys and returned to the living room and sat down. David exited the house, with Rodriguez locking the door after he left.

C. tried to calm Rodriguez so she could leave the house. Rodriguez kept getting louder and accusing her of “stuff.” She was waiting for an opportunity to leave the house. She did not want to try to force her way out of the house because she was afraid the argument might escalate into a violent encounter.

C. heard someone pounding on the front door. Rodriguez became irritated. He ran to the front door, opened it, and said something to whoever was outside. Rodriguez slammed the door and locked it again. When he returned, C. saw he had a folding knife in his hand that he pulled from his pocket. This was the first time C. had seen the knife.

Rodriguez approached C. and continued arguing with her. She became even more afraid and put a small table between herself and Rodriguez. Rodriguez continued to threaten her.

Someone was still pounding on the front door, which continued to irritate Rodriguez. He returned to the front door and ran outside. When C. saw him run out the front door, she attempted to flee. She ran into the garage and pushed the button to activate the automatic garage door opener. She then ran around her car. She could see

Rodriguez behind her, and saw him push the button to close the garage door, trapping her inside.

Rodriguez began stabbing C. in the chest with the knife. She was also cut on her head and her forearm. She eventually fell onto her back, but she did not recall exactly how. She recalled seeing David and Toale trying to pull Rodriguez off her. Then Rodriguez turned towards Toale and began swinging the knife at him. C. also heard another neighbor, Gary Raley, telling Rodriguez to let go of the knife.

C. heard Raley say that he had the knife, and she felt relieved. Rodriguez then ran out of the garage. He was restrained by another neighbor in the driveway, but he broke away. A police officer who had arrived at the house finally stopped him.

C. went into the house looking for Toale. While inside, she saw the front door had been barricaded to prevent anyone from entering. She was taken to the hospital where four wounds were stitched. She returned home the following day.

Ten months before the attack, Rodriguez had called C. regarding an incident wherein he was arrested in an unrelated manner. C. recorded that phone call and the conversation was played for the jury.

David

David Derek Rodriguez is the son of C. and Rodriguez. He was living with C. and Rodriguez on the day of the attack. Rodriguez came home first and seemed to be upset about something that occurred at work. When C. arrived home later that evening, Rodriguez immediately began arguing with her. C. attempted to ignore him, but Rodriguez continued to argue with her. Rodriguez appeared to be accusing C. of spending time with another man, and they argued about finances. C. threatened to call the police. In response, Rodriguez pulled the phone cord out of the wall. David heard Rodriguez threaten C. David tried calling the police because Rodriguez was getting violent, but David did not think the operator took him seriously.

As the argument continued to escalate, David exited the house and went to the neighbor's house for help. Rodriguez locked the front door when David left. David's sister Cilicia and Toale drove up when David exited the house. David asked them for help because C. was locked in the house, and he did not know what Rodriguez was going to do.

David and Toale attempted to break into the house through the front door, but the door had been blocked by several items. Rodriguez opened the door and ran after David and Toale with a knife in his hand. Then he ran back into the house. David and Toale again attempted to open the front door, but the items had been put in front of it so they were unsuccessful. David looked inside the house through a window and saw Rodriguez confronting C. with a knife in his hand. David and Toale again started banging on the door. Rodriguez turned towards the door. At this point C. ran for the garage, but Rodriguez followed her there. David heard the garage door opening and ran towards it. David looked underneath the door, which was open about 12 inches, and saw Rodriguez push the button to close the door. David blocked the sensor and the door stopped. It was open about 18 inches and he was able to crawl under it. Rodriguez and C. were in the corner of the garage, and Rodriguez was stabbing C. David grabbed a broom and swung at Rodriguez. Toale was also in the garage punching Rodriguez. Rodriguez turned towards Toale and stabbed him. Toale did not have a weapon in his hands.

Raley came into the garage and joined Toale in attempting to restrain Rodriguez. Raley and Toale succeeded in taking the knife away from Rodriguez. Another neighbor, Robert Jorgensen, helped to restrain Rodriguez. But Rodriguez escaped and ran out of the garage. Jorgensen pursued him and slowed him down until the police arrived and restrained Rodriguez.

Cilicia

Cilicia Rodriguez, Rodriguez's daughter, confirmed that David was outside when she and Toale arrived at the house on the night in question. David looked worried and

told Cilicia that Rodriguez was going to hurt C. Cilicia heard C. screaming. The three tried to enter the house through the front door but could not do so. Cilicia called 911 while David tried to break in through the front door. Rodriguez came out the front door with a knife and started chasing the three of them.

After Rodriguez went back inside the house, Toale again attempted to enter through the front door. The garage door started to open, and the three ran toward it. The garage door started closing, but David blocked the sensor. He and Toale ran inside the garage, and Cilicia saw Rodriguez making stabbing motions at C. Cilicia ran towards the street, but remembered seeing Toale and David attempting to intervene. She began shouting for someone to help.

Cilicia saw Rodriguez being restrained by David and Jorgensen in the garage and then breaking away. Rodriguez ran out the garage door, down the driveway, and into the street. The police arrived while Rodriguez was in the street.

Toale

Toale testified that, on the evening in question, he drove up to the house with Cilicia. David ran up to Toale's vehicle and said that Rodriguez was trying to kill C. The three of them ran up to the house and tried to get inside. Rodriguez opened the door, asked Toale if he wanted to fight, and then went back inside the house and locked the door. David was attempting to break the door down, so Toale told him to move aside and he tried to kick the door open. Rodriguez then came running out the door with a knife in his hand. David and Toale began running away, but Rodriguez did not follow. Instead, Rodriguez went back inside the house. The garage door began to open, and Toale saw C. running around the vehicle that was inside the garage.

Toale saw Rodriguez enter the garage and attempt to close the door. David stopped the garage door from closing by blocking the sensor. Rodriguez then trapped C. in a corner and proceeded to stab her. Toale ran into the garage to try and save C. even though he did not have a weapon. He struck Rodriguez in the back of the head with his

fist. David was also in the garage and was using a broom handle in an attempt to stop the attack. Rodriguez stabbed Toale in the back of the head until Toale was able to grab his wrist. Raley came into the garage and helped Toale restrain Rodriguez. Raley was able to take the knife away from Rodriguez. Neither Toale nor David possessed the knife that night.

Toale realized he was seriously injured and asked Raley to take him to the hospital. On the way to the hospital, several police cars passed them on the way to the scene of the stabbing. Raley was able to stop one of the cars and gave them the knife (of which he had retained possession). The officer asked Toale who had stabbed him, and Toale stated that Rodriguez had done so. Raley then drove Toale to the hospital. Toale suffered four knife wounds.

Raley

Raley lived across the street from Rodriguez on the date of the incident. He was working on his computer about 10:30 p.m. when he heard noises coming from the Rodriguez house. He went outside and saw Toale, Cilicia, and David on the front porch. The front door opened and someone chased the three off the porch. The individual coming out of the house looked like Rodriguez. Raley was calling the emergency operator at the time, so he did not focus entirely on what was happening. But he did see the garage door open and heard Cilicia calling for help. Raley gave his phone to his wife and ran into Rodriguez's garage. He found Toale, Rodriguez, and C. in the corner of the garage. C. and Toale were holding Rodriguez. Raley saw a knife in Rodriguez's left hand and grabbed onto his forearm. Raley was still holding onto Rodriguez's forearm when Jorgensen came into the garage. Jorgensen and Raley continued to hold onto Rodriguez until Raley was able to take the knife away from Rodriguez. Toale told Raley he needed to go to the hospital, so Raley walked him across the street towards Raley's house. Raley retained possession of the knife.

Raley and Toale got into Raley's truck and headed towards the hospital. Raley saw several police cars headed towards the Rodriguez residence. He was able to stop the last police car and dropped the knife into the street.

Jorgensen

Jorgensen lived next to Raley, across the street from the Rodriguez residence. He was arriving home when he heard screaming coming from the direction of the Rodriguez residence and he saw Raley run towards the residence. He dropped his suitcase and followed Raley. When he entered the Rodriguez garage, Jorgensen saw several individuals and a lot of commotion. Raley said something about a knife. Raley was holding Rodriguez's wrist. Rodriguez was trying to strike or push Raley with his free arm, so Jorgensen grabbed that arm. Jorgensen put a wrist lock on Rodriguez and grabbed his hair and pulled his head back. Raley and the other man left the garage, and Jorgensen was left restraining Rodriguez. Rodriguez eventually was able to break away from Jorgensen and ran out the garage door. Jorgensen caught Rodriguez in the front yard. Rodriguez was swinging his fist at Jorgensen. Rodriguez broke away from Jorgensen again and ran into the street. Jorgensen pursued Rodriguez, but the police arrived and apprehended Rodriguez.

Rodriguez

Rodriguez testified that he arrived home about 8:00 p.m. on the night of the incident. David was home but C. and Cilicia were not there. C. arrived home about 10:00 p.m. Rodriguez was in the kitchen drinking beer and preparing a meal. C. immediately began complaining about Rodriguez drinking beer and making a mess in the kitchen. Rodriguez told C. to remain calm and he would clean up his mess. He also told her he wanted to discuss some issues about which she was in denial.

A short while later Toale knocked on the front door. Rodriguez answered the front door, told Toale he was trespassing, and asked him to leave the property. Rodriguez then shut the door and locked it. Shortly thereafter he heard loud banging on the front

door, and it burst open. Toale entered the house and chased after Rodriguez, who ran into the garage and attempted to open the garage door. Toale struck him in the back of the head numerous times. C. entered the garage and attempted to separate Toale and Rodriguez. Toale grabbed a knife that was sitting on top of a tool box and started swinging his arms. Toale struck C. with the knife, and she fell to the ground. Toale attempted to stab Rodriguez, but missed and then tripped and fell to the ground. Rodriguez grabbed the hand in which Toale held the knife, disarmed Toale, and began stabbing Toale. When Toale was incapacitated, Rodriguez handed the knife to David. Raley then took Toale from the scene and took the knife from David.

Rodriguez then began struggling with Jorgensen. Rodriguez broke free from Jorgensen and ran inside the house and then out the front door. Rodriguez saw five neighbors observe him run out the front door. Jorgensen caught up with Rodriguez on the front lawn and the two began fighting again. The police arrived shortly thereafter and Rodriguez was arrested.

On cross-examination Rodriguez stated he voluntarily drank approximately four 24-ounce cans of beer that night, but his memory was intact. He was, however, “feeling the effect.”

Verdict and Sentencing

The jury found Rodriguez guilty of two counts of attempted murder with premeditation and deliberation, battery on a spouse, and false imprisonment. The jury also found true all great bodily injury allegations and that Rodriguez personally used a deadly or dangerous weapon in counts 1, 2 and 3. Rodriguez admitted the allegations that he had suffered a prior crime were true.

The trial court stayed the sentence on the spousal battery count and its enhancement and imposed consecutive sentences on each remaining count and enhancement. As a result, Rodriguez was sentenced to a determinate term of 29 years and a consecutive indeterminate term of 75 years to life.

DISCUSSION

I. Sufficiency of the Evidence

The jury found Rodriguez guilty of the attempted murder with premeditation and deliberation of Toale (count 2). Rodriguez argues that, for two reasons, the evidence was insufficient to support this conviction. First, he argues, there was insufficient evidence that he acted with malice aforethought, thus requiring the conviction be reduced to attempted voluntary manslaughter. Second, even if there was sufficient evidence that he acted with malice, Rodriguez argues, there was insufficient evidence that he acted with premeditation.

To assess the evidence's sufficiency, we review the whole record to determine whether *any* rational trier of fact could have found the essential elements of the crime true beyond a reasonable doubt. (*People v. Maury* (2003) 30 Cal.4th 342, 403.) The record must disclose substantial evidence to support the verdict—i.e., evidence that is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. (*Id.* at p. 396.) In applying this test, we review the evidence in the light most favorable to the prosecution and presume in support of the judgment the existence of every fact the jury could reasonably have deduced from the evidence. (*People v. Boyer* (2006) 38 Cal.4th 412, 480.)

“Conflicts and even testimony [that] is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends. [Citation.] We resolve neither credibility issues nor evidentiary conflicts; we look for substantial evidence. [Citation.]” (*People v. Maury, supra*, at p. 403.)

A reversal for insufficient evidence “is unwarranted unless it appears ‘that upon no hypothesis whatever is there sufficient substantial evidence to support’” the jury’s verdict. (*People v. Bolin* (1998) 18 Cal.4th 297, 331.)

The same standard governs in cases where the prosecution relies primarily on circumstantial evidence. (*People v. Maury, supra*, 30 Cal.4th at p. 396.) We “must

accept logical inferences that the jury might have drawn from the circumstantial evidence. [Citation.]” (*Ibid.*) “Although it is the jury’s duty to acquit a defendant if it finds the circumstantial evidence susceptible of two reasonable interpretations, one of which suggests guilt and the other innocence, it is the jury, not the appellate court that must be convinced of the defendant’s guilt beyond a reasonable doubt. [Citation.]” (*People v. Kraft* (2000) 23 Cal.4th 978, 1053-1054.) Where the circumstances reasonably justify the trier of fact’s findings, a reviewing court’s conclusion the circumstances might also reasonably be reconciled with a contrary finding does not warrant reversal of the judgment. (*Ibid.*)

A. Malice Aforethought

Murder is defined as the unlawful killing of a human being with malice aforethought. (§ 187, subd. (a).) The crime is voluntary manslaughter if a defendant unlawfully kills another without malice aforethought. (*People v. Blacksher* (2011) 52 Cal.4th 769, 832.) Rodriguez argues there was insufficient evidence of malice because he acted upon a sudden quarrel or in the heat of passion. (§ 192, subd. (a); *People v. Carasi* (2008) 44 Cal.4th 1263, 1306.)

Malice in a prosecution for murder “may be express or implied. It is express when there is manifested a deliberate intention unlawfully to take away the life of a fellow creature. It is implied, when no considerable provocation appears, or when the circumstances attending the killing show an abandoned and malignant heart.” (§ 188.) However, in a prosecution for attempted murder the People must prove that the defendant acted with express malice, i.e., he had the specific intent to kill, and committed a direct but ineffectual act toward accomplishing the intended killing. (*People v. Smith* (2005) 37 Cal.4th 733, 739.) Accordingly, the intent to unlawfully kill another person and express malice are identical in a prosecution for attempted murder. (*Ibid.*)

The jury necessarily concluded Rodriguez had the specific intent to kill Toale, and he committed a direct but ineffectual act toward accomplishing that goal. That Rodriguez

committed a direct but ineffectual act toward killing Toale is not in dispute. Rodriguez stabbed Toale numerous times, including a serious wound in Toale's neck that, if left untreated, might have proven to be fatal. The issue is whether Rodriguez intended to kill Toale, or whether he acted upon a sudden quarrel or in the heat of passion.

“An intentional, unlawful homicide is ‘upon a sudden quarrel or heat of passion’ (§ 192(a)), and is thus voluntary manslaughter (*ibid.*), if the killer's reason was actually obscured as the result of a strong passion aroused by a ‘provocation’ sufficient to cause an “‘ordinary [person] of average disposition ... to act rashly or without due deliberation and reflection, and from this passion rather than from judgment.’” [Citations.] “[N]o specific type of provocation [is] required” [Citation.] Moreover, the passion aroused need not be anger or rage, but can be any “‘[v]iolent, intense, high-wrought or enthusiastic emotion’” [citation] other than revenge [citation]. ‘However, if sufficient time has elapsed between the provocation and the fatal blow for passion to subside and reason to return, the killing is not voluntary manslaughter’ [Citation.]” (*People v. Breverman* (1998) 19 Cal.4th 142, 163.)

Rodriguez argues that the evidence supported a finding that he acted upon a sudden quarrel or a heat of passion when he stabbed Toale. He points out that as he was stabbing C., David was hitting him with a broom handle and Toale was hitting him in the back of the head with his fists. Rodriguez argues that he acted reflexively, and the emotion and confusion that was occurring as he turned to stab Toale should have led the jury to conclude that his actions lacked malice. Several witnesses testified that Rodriguez locked the front door while he was in the house with C. David and Toale pounded on the door and attempted to break into the house. Rodriguez first threatened them with the knife and then chased them into the front yard. The jury could have inferred from this threat that Rodriguez harbored malice towards Toale.

Moreover, the jury could have concluded that it was *unreasonable* for Rodriguez to attack Toale with a knife in response to Toale's attempts to stop Rodriguez's attack on C. This conclusion is further supported by Rodriguez's admission that he attacked Toale after Toale had tripped and fallen to the ground. Rodriguez testified that he was able to disarm Toale. The jury could have inferred from these admissions that any arguable

danger ceased to exist, and the decision to attack Toale was malicious. Accordingly, we reject Rodriguez’s argument that there was insufficient evidence to support the finding that he acted with malice.

B. Premeditation

The jury also found that Rodriguez’s attack on Toale was willful, deliberate, and premeditated, thus resulting in an increased sentence. (§ 664, subd. (a); *People v. Bright* (1996) 12 Cal.4th 652, 669, overruled on other grounds in *People v. Seel* (2004) 34 Cal.4th 535, 550, fn. 6.) Rodriguez argues that the finding on this special allegation was not supported by substantial evidence.

Premeditated and deliberate does not require proof that the “defendant maturely and meaningfully reflected upon the gravity of his or her act.” (§ 189.) Instead,

“‘[i]n this context, “premeditated” means “considered beforehand,” and “deliberate” means “formed or arrived at or determined upon as a result of careful thought and weighing of considerations for and against the proposed course of action.”’ [Citation.] ‘An intentional killing is premeditated and deliberate if it occurred as the result of preexisting thought and reflection rather than unconsidered or rash impulse.’ [Citation.] A reviewing court normally considers three kinds of evidence to determine whether a finding of premeditation and deliberation is adequately supported—preexisting motive, planning activity, and manner of killing—but ‘[t]hese factors need not be present in any particular combination to find substantial evidence of premeditation and deliberation.’ [Citations.]” (*People v. Jurado* (2006) 38 Cal.4th 72, 118-119.)

Rodriguez argues that his attack on Toale was a reflexive action as a result of Toale striking him. He insists there is no evidence of motive or planning. We disagree. The testimony was clear that Rodriguez did not like Toale, and that Toale did not like Rodriguez. It also appeared that Rodriguez disapproved of his daughter dating Toale. Finally, Toale intervened when Rodriguez was attacking C., thus preventing Rodriguez from completing his assault. The jury could reasonably infer that Rodriguez was motivated to attack Toale for these reasons.

The evidence also established that Rodriguez chased David and Toale with a knife when they attempted to enter the house and rescue C. Rodriguez also threatened Toale when Toale attempted to enter the house. The jury could reasonably infer that when Toale entered the garage, Rodriguez concluded this was his opportunity to deal with Toale.

While this evidence is not overwhelming, it is reasonable, credible, and of solid value. It is, therefore, substantial evidence to support the verdict.

II. Evidentiary Issues

Rodriguez argues the trial court made two errors in ruling on evidence. The first ruling precluded Rodriguez from introducing any evidence regarding an alleged rape of C. The second ruling permitted the People to introduce a tape recording of Rodriguez threatening to kill C.

We review evidentiary rulings for an abuse of discretion. (*People v. Cox* (2003) 30 Cal.4th 916, 955, overruled on other grounds in *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22.) “A trial court’s exercise of discretion in admitting or excluding evidence ... will not be disturbed except on a showing the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner” (*People v. Rodriguez* (1999) 20 Cal.4th 1, 9-10.) Or, stated another way, a trial court abuses its discretion when it appears that its decision exceeds the bounds of reason when all of the circumstances are considered. (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1121.) Any error in evidentiary rulings will require reversal only if the error resulted in a miscarriage of justice. (Cal. Const., art. VI, § 13.) A miscarriage of justice occurs where it appears reasonably probable the defendant would have achieved a more favorable result had the error not occurred. (*People v. Breverman, supra*, 19 Cal.4th at p. 149.)

A. Exclusion of Evidence of Rape

Rodriguez argued with the trial court on several occasions that he should be allowed to introduce evidence of an incident involving C. that occurred over 10 years

before trial. As we understand the record, Rodriguez contended that while he was in prison, he was involved in a dispute with another individual, apparently because he would not ask C. to smuggle drugs into prison. In order to gain Rodriguez's cooperation, this other individual either raped C. after he was released, or ordered someone else to rape C. Because C. was so devastated by the rape, she allegedly moved out of town for three months.

Rodriguez argued this evidence was admissible to establish that C. was angry about the rape, and she transferred her anger to Rodriguez and fabricated the allegations against him as a result of this anger.

In addition, Rodriguez sought to introduce evidence that as a result of this traumatic event, C. suffered from Rape Trauma Syndrome. This condition caused C. to have a "meltdown" shortly before the attack. To control her anxiety, C. apparently illegally obtained some psychotropic medication that she was using at the time of the attack.

Rodriguez admitted he did not have any evidence to support his allegations other than his testimony. He was not present when C. was allegedly raped, but claimed that she confessed the incident to him. Moreover, Rodriguez admitted he had not retained any expert witness who could testify about Rape Trauma Syndrome, who could testify that C. suffered from Rape Trauma Syndrome, or who could testify that C. transferred her anger to Rodriguez.

The prosecutor informed the trial court that he had spoken with C. about the matter, and she denied being raped. Another potential witness, Melissa Van Lynn, admitted that C. moved out of town for a period of time, but denied that C. was raped or that the move was related to the alleged rape. Finally, the prosecutor represented that another potential witness, Jessica Starks, who Rodriguez claimed provided the psychotropic medication that C. allegedly took, denied ever providing psychotropic medication for C.'s use.

The trial court concluded, in essence, that the evidence should be excluded because its probative value was substantially outweighed by an undue consumption of court time, and that Rodriguez's failure to provide any medical testimony to support his theory rendered the evidence irrelevant.

Rodriguez argues the trial court abused its discretion when it excluded the evidence because the ruling violated his constitutional right to present a defense (*Washington v. Texas* (1967) 388 U.S. 14, 19), and his Fifth Amendment right to confront witnesses. There was no error.

Only relevant evidence is admissible at trial. (Evid. Code, § 350.) Relevant evidence is evidence that has any tendency in reason to prove or disprove any disputed fact that is of consequence to the action, including evidence related to the credibility of a witness. (Evid. Code, § 210.) The evidence offered by Rodriguez does not meet this threshold test.

Whether C. was raped was not relevant because it did not have any tendency in reason to prove that C. harbored a bias towards Rodriguez. Even if C. admitted she was raped, unless competent, admissible evidence could establish that the rape was the result of a dispute between Rodriguez and another individual, then it would not be possible to establish that Rodriguez was the indirect cause of the rape. Moreover, it would not be possible to prove that C. harbored resentment against Rodriguez as a result of the rape unless competent psychiatric testimony was presented to establish that fact. Finally, without psychiatric testimony, it would not be possible for Rodriguez to establish that any anger that C. harbored towards him as a result of the rape would cause her to fabricate testimony. Rodriguez admitted he did not have any such evidence. Rodriguez was merely speculating that some such evidence may exist, and he might be able to uncover it during trial. Speculative inferences are not admissible. (*People v. Babbitt* (1988) 45 Cal.3d 660, 681-682.)

When we take into consideration the fact that all the relevant witnesses except for Rodriguez denied that any of the events took place, it is clear that the trial court correctly concluded that the evidence would consume an undue amount of court time. Rodriguez would have to call numerous witnesses who would all deny that his assertions occurred. He would then have to testify to the alleged events, subjecting him to extensive cross-examination. The People would then have to produce additional witnesses to rebut Rodriguez's testimony. The trial court also correctly noted that the jury was already aware of the animosity between C. and Rodriguez as a result of their exchanges during cross-examination (since Rodriguez was acting as his own attorney). Considering the very limited probative value of the proposed testimony, the evidence was properly excluded pursuant to the provisions of Evidence Code section 352.

The trial court's ruling did not exceed the bounds of reason, and no abuse of discretion occurred.

B. Admission of Prior Threat

The People introduced a tape recording of a threat Rodriguez made to C. In this threat, Rodriguez threatened to kill C. if she didn't "stop it." It is unclear to what Rodriguez was referring. C. testified that she received the phone call approximately 10 months before Rodriguez attacked her.⁴

⁴The transcript of the tape states: "[RODRIGUEZ]: (Unintelligible) you know. (Unintelligible) I don't know what you were thinking here. You act like ... you ... you're forgetting about the \$23,000 you fucked me out of. I mean, what are you thinking about that? (Unintelligible) A whole ... a whole chain of events (Unintelligible) now. If you don't stop it, it's gonna go to the next level. Do you understand? I can't make it anymore simple for you. I'm trying to tell you. I'm trying to tell you this is gonna end in a total tragedy. Total tragedy! Do you understand where this is going? You're gonna keep going, I'm gonna keep going, and it's gonna be over for everyone. If you're gonna have kids there, they're gonna be orphans. They're gonna be abused by other people. Raped and murdered and abused because you're not gonna be around and neither am I, bitch. If you don't stop it, you've got till tomorrow morning. Do you understand where this is going? I'm gonna take it to the next level if you do not stop. If I see I'm going to jail, you're done bitch. You better believe me."

Rodriguez argues the phone call was inadmissible propensity evidence, and its admission resulted in a violation of his rights to due process, a fair trial, and fundamental fairness under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution. We disagree.

While the fact a defendant committed a prior crime (propensity evidence) is generally not admissible to prove he also committed the charged crime (Evid. Code, § 1101, subd. (a)), such evidence is admissible to prove a specific fact, such as motive or intent (*id.*, subd. (b)).

Rodriguez was charged with the attempted murder of C., and with committing that attempt with deliberation and premeditation. The People were charged with proving that Rodriguez intended to kill C., and that he decided to kill C. before he stabbed her. (CALCRIM No. 521.) Rodriguez’s threat established his intent when he attacked C. The evidence was thus relevant and admissible under Evidence Code section 1101, subdivision (b).

Rodriguez appears to argue that the evidence should have been excluded pursuant to the provisions of Evidence Code section 352, i.e., the probative value of the evidence was substantially outweighed by its prejudicial affect. He asserts the phone call was highly prejudicial because it tended to cause the jury to be emotionally biased against him. We agree the phone call was prejudicial. Ten months before he repeatedly stabbed C., Rodriguez had threatened to do exactly that. In other words, his intent was clearly established by the phone call. Moreover, Rodriguez defended against these charges by alleging that Toale stabbed C., and he stabbed Toale in self-defense. This evidence was relevant, and prejudicial to Rodriguez, because it undermined Rodriguez’s defense and corroborated the validity of the testimony provided by the other witnesses. This, however, is not the type of prejudice at which Evidence Code section 352 is directed.

“Evidence is prejudicial within the meaning of Evidence Code section 352 if it “uniquely tends to evoke an emotional bias against a party as an individual” [citations] or if it would cause the jury to “‘prejudg[e]’ a

person or cause on the basis of extraneous factors” [citation].” (*People v. Cowan* (2010) 50 Cal.4th 401, 475.)

The threat made by Rodriguez was not the type of evidence that would evoke an emotional bias against him, nor would it cause the jury to prejudge him or the case, especially when the rest of the testimony is considered. The testimony established that Rodriguez argued with C., locked her in the house, threatened Toale and David when they attempted to come to her aid, stabbed C. when she attempted to escape, and then stabbed Toale when he attempted to come to her aid. The threat was consistent with this evidence, and was not likely to cause any type of emotional reaction by the jury in light of Rodriguez’s actions that night. Accordingly, the trial court did not err in admitting the threat because its probative value substantially outweighed any prejudicial affect the threat may have had.

C. Miscarriage of Justice

Even if we agreed with Rodriguez that the above two evidentiary rulings were erroneous, reversal would not be required because Rodriguez cannot establish the rulings resulted in a miscarriage of justice. A miscarriage of justice occurs when it appears reasonably probable that the defendant would have achieved a more favorable result had the error not occurred. (*People v. Breverman, supra*, 19 Cal.4th at p. 149.)

Rodriguez argues his threat that C.’s children would end up being raped and killed and his false claim that she stole money from him inevitably inflamed the passions of the jury and swayed the verdict against him. We disagree. The evidence against him was overwhelming. Three individuals testified that they saw him stab C. and then stab Toale when he attempted to come to her rescue. Two other individuals testified that Rodriguez had the knife. No witness corroborated Rodriguez’s testimony that Toale attacked him and that he stabbed Toale in self-defense. Moreover, every witness contradicted other parts of Rodriguez’s testimony. For example, Rodriguez claimed he ran through the house and then out the front door after the stabbing. Every other witness testified that

Rodriguez ran out of the garage door after he escaped from Jorgensen. While this point was not significant, it did serve to undermine Rodriguez's credibility.

Rodriguez's testimony was simply unbelievable because it was contradicted in every significant respect by every other witness, including two neighbors who had no demonstrable bias against Rodriguez. Therefore, even if the jury had not heard the threatening phone call, or had heard Rodriguez's claims that C. had been raped, it is not reasonably probable that Rodriguez would have achieved a more favorable result.

III. Section 654

Rodriguez was convicted in count 1 of attempting to murder C. He was also convicted, in count 4, of falsely imprisoning C. The prosecutor argued that the false imprisonment occurred inside the house, while the attempted murder occurred in the garage. Rodriguez argues that these two events were part of a continuous course of conduct and the trial court erred at sentencing when it failed to stay the sentence on count 4 pursuant to section 654.

“Section 654 precludes multiple punishment for a single act or indivisible course of conduct punishable under more than one criminal statute. Whether a course of conduct is divisible and therefore gives rise to more than one act within the meaning of section 654 depends on the ‘intent and objective’ of the actor. [Citation.] If all of the offenses are incident to one objective, the court may punish the defendant for any one of the offenses, but not more than one. [Citation.] If, however, the defendant had multiple or simultaneous objectives, independent of and not merely incidental to each other, the defendant may be punished for each violation committed in pursuit of each objective even though the violations share common acts or were parts of an otherwise indivisible course of conduct. [Citation.]”
(*People v. Cleveland* (2001) 87 Cal.App.4th 263, 267-268.)

The trial court determines the defendant's intent and objective under section 654. (*People v. Cleveland, supra*, 87 Cal.App.4th at p. 268.) We review the trial court's finding that a defendant had a separate intent and objective for each offense to determine if it is supported by substantial evidence. (*People v. Blake* (1998) 68 Cal.App.4th 509, 512.)

Rodriguez argues the sentence on the false imprisonment conviction should have been stayed pursuant to section 654 because the events occurred during a single course of conduct and he harbored only one intent that evening, to kill C. There is, of course, no direct evidence to support this claim since Rodriguez's defense consisted of insisting that Toale had stabbed C. Rodriguez argues, however, that the trial court could have inferred from the events that Rodriguez harbored this intent.

The trial court explained at sentencing its view of the events, albeit when considering whether to impose consecutive or concurrent sentences. It explained that the false imprisonment began no later than when Rodriguez pulled a knife from his pocket and opened it while in the living room of the house. He continued arguing with C. and used the knife to prevent her from leaving the room. The false imprisonment ended, in the trial court's view, when Rodriguez ran outside and chased Toale, David, and Cilicia. At this time, C. ran into the garage in an attempt to escape.

The trial court concluded the interruption in the events provided Rodriguez with an opportunity to reflect on his conduct. Instead of terminating his confrontation with C., Rodriguez decided to escalate the encounter. He returned to the house, barricaded the front door, and pursued C. into the garage. While in the garage, Rodriguez attempted to murder C. The trial court concluded the two crimes were thus separated by time and location.

The record amply supports each of the facts recited by the trial court, and these facts establish that counts 1 and 4 were not part of a continuous course of conduct with the same intent and objective. Indeed, it makes little sense to suggest that Rodriguez's only intent was to murder C. when he did not attack her when she first arrived at home, but waited until events had escalated to do so. Nor did he attack her when he first pulled out the knife. He waited until she attempted to escape before he attacked. This suggests the intent to murder C. was formed when Rodriguez discovered that C. was attempting to escape when he returned to the house after chasing Toale, David, and Cilicia.

These facts provide substantial evidence that the two crimes, false imprisonment of C. and the attempted murder of C., were not part of a continuous course of conduct and were not the result of a single intent and objective. Accordingly, the trial court did not err when it failed to stay the sentence on the false imprisonment count.

DISPOSITION

The judgment is affirmed.

DAWSON, Acting P.J.

WE CONCUR:

POOCHIGIAN, J.

DETJEN, J.